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WPO/870/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

JAYANTI PAUL.

-VERSUS-

HDFC BANK LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 3rd October, 2024.

Appearance:
Mr. Jaydip Kar, Sr.Adv.
Mr. Arijit Bardhan, Adv.
Mr. Soumyajit Mishra, Adv.
Mr. Rishabh Dutta Gupta, Adv.
.... for the petitioner.

Mr. Sakya Sen, Adv.
...for the respondents.

The Court: The writ petition has been filed challenging the order passed by the Chief Judicial Magistrate, Alipore, South 24 Parganas (In Misc. Case No. 67 of 2024). An order was passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

The bailiff of the Court was appointed to take possession of the secured assets, being the entire first, third and fourth floor of the building measuring 1914 sq.ft. known as 'Jayanti', constructed upon a 5 cottah land being premises no.2/5/1, Hindustan Road, P.S. Gariahat, Kolkata- 700 029.

Mr. Kar, learned senior Advocate for the petitioner submits that the order was without jurisdiction. When the District Magistrate was available in the district, the Chief Judicial Magistrate, Alipore did not have any authority under the law to entertain such application. The next contention of Mr. Kar is that the petitioner is a co-sharer in respect of portions of the floors which were mortgaged to the bank. The original deed which was mortgaged, had mentioned the right of the petitioner on the basis of a deed of partition. The bank could not have initiated proceedings to take over the entire mortgaged property thereby depriving the petitioner from her right to enjoy her portion of the property, on the basis of a partition deed. According to Mr. Kar, the mortgage of the property in which there was an existing co-sharer, without the consent of the co-sharer, was invalid. Reliance has been placed on a letter of the bank. The objection raised by the petitioner was considered by the bank. The bank acknowledged that, the fact that the petitioner had a claim in the mortgaged property had been concealed from the bank. The petitioner was asked to approach the bank with necessary documents.

Mr. Sen, learned Advocate for the petitioner submits that in the decision of the Hon'ble Apex Court (Authorised Officer, Indian Bank vs. D. Visalakshi & Anr.), it was held that the Chief Judicial Magistrate was equally competent to deal with an application moved by a secured creditor under Section 14 of the 2002 Act. Accordingly, the decisions of the Kolkata, Bombay and Madras High Courts were reversed and the decisions of the Kerala, Karnataka, Allahabad and Andhra Pradesh High Court were upheld. Although

Mr. Kar submits that the issue as to whether in presence of a District Magistrate in a particular district, the Chief Judicial Magistrate would still have the power to proceed under Section 14 of the SARFAESI Act, 2002, was not decided by the Hon'ble Apex Court. However, on a reading of the judgment of the Hon'ble Apex Court, this Court is of the, prima facie, view that the Hon'ble Apex Court had held that the Chief Judicial Magistrate in a non-metropolitan area had the same powers as the Chief Metropolitan Magistrate in the metropolitan areas. Such view of the Kerala, Karnataka and Allahabad High Courts was upheld upon taking note of the liberal interpretation of the expression "Chief Metropolitan Magistrate" which appears in Section 14 of the said Act.

Under such circumstances, entertaining the writ petition on the ground of lack of jurisdiction would not be proper as the decision of the Hon'ble Apex Court would require thorough enquiry. The petitioner is at liberty to challenge the order, in accordance with law, on all grounds including the ground of jurisdiction of the CJM and also the steps taken by the bank. Being an aggrieved person as contemplated under Section 17 of the Debts Recovery Tribunal Act, the petitioner has an alternative remedy. Further question as to whether the mortgage was valid, whether the bank should take possession of the entire mortgaged property or allow the petitioner to enjoy her portion of the mortgaged property, may be made before the Tribunal and the Tribunal will decide such issues as interim prayers, before proceeding with the other issues, in accordance with law.

Till November 15, 2024, the bank shall not take any coercive measure insofar as, the petitioner's interest in the mortgaged property is concerned.

It is also made clear that this Court has not expressed any opinion as regards the merits of the matter.

Accordingly, WPO/870/2024 is disposed of.

All parties are to act on the basis of a server copy of this order.

(SHAMPA SARKAR, J.)

TR/A/s.